



**Office of the Attorney General
State of Texas**

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ATTORNEY GENERAL

August 27, 1996

The Honorable Debra Danburg
Chair, Committee on Elections
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-094

Re: Eligibility under the Election Code of person who voted in political primary election to file ballot application as candidate aligned with a different party in special election in same voting year (ID# 39054)

Dear Representative Danburg:

You ask whether a person who voted in the Republican party's primary election may file a ballot application stating that the person is aligned with the Democratic party for the purpose of becoming a candidate in a special election to be held in the same year to fill a vacancy in the Texas Senate. We conclude that the Texas Election Code does not prohibit such a candidacy.

Chapter 203 of the Election Code governs vacancies in the state legislature. A vacancy in a state senator's unexpired term of office may be filled only by special election. Elec. Code § 203.002. To be entitled to a place on the special election ballot, a candidate must file an application with the Secretary of State that includes a statement of the political party with which the candidate is aligned, if any. *Id.* §§ 203.005, .011. The candidate must also meet the general eligibility requirements for public office, *id.* § 141.001, and either pay the filing fee or submit a nominating petition with the required number of signatures, *id.* § 203.005(b)(2). If the application complies with chapter 203 requirements, the Secretary of State must certify the candidate and place the name on the ballot. *Id.* § 203.009.

As your question suggests, however, a person's vote in a primary election may limit that person's eligibility for candidacy in a succeeding election. We considered two Election Code provisions that give consequence to primary voting.

Section 162.015 of the Election Code provides:

(a) A person who voted at a primary election or who was a candidate for nomination in a primary is ineligible for a place on the ballot for the succeeding general election for state and county officers as:

(1) an independent candidate for an office for which a candidate was nominated in the primary; or

(2) the nominee of a political party other than the party holding the primary in which the person voted or was a candidate.

Section 162.015 bars a person who voted in a primary election from being a nominee of a different political party in the succeeding *general* election. *Id.* § 162.015(a). By its express terms, section 162.015 does not apply to special elections.

Furthermore, section 162.015 prohibits a primary voter from being the *nominee* of a different party. When a person lists his or her party alignment on the ballot application, the person is not necessarily the nominee of that party. Party nominees may be chosen only at a primary election or a party convention. *See id.* § 161.003 ("A political party may make nominations for public office only by the methods provided by this code."); *id.* subtitle B (providing for nomination by primary election); *id.* subtitle C (providing for nomination by convention). Section 162.015 by its express terms does not apply to an election for which candidates are not nominated by any party. *Cf.* Election Law Opinion DAD-69 (1983) (construing the predecessor to section 162.015, article 13.11a of the Election Code, as inapplicable to a special election in which a candidate is not nominated by any party).¹ We therefore conclude that section 162.015 does not prohibit a person who voted in a political party's primary election from aligning as a candidate for a different party in a succeeding special election.

We also considered whether the Election Code's ban on dual party affiliation prohibits the proposed candidacy. Section 162.012 of the code prohibits a person who is affiliated with a political party from becoming affiliated with another political party during the same voting year.² Elec. Code § 162.012. While the Election Code does not define the term "affiliate," the code describes the ways in which party affiliation may occur. A person becomes affiliated with a party by voting in the party's primary, *id.* § 162.003, participating in a precinct convention, *id.* § 162.007, or taking an oath of affiliation, *id.* § 162.008. Thus a person may not vote in more than one party's primary or participate in more than one party's convention. *Id.* § 162.014.

¹Section 162.015 replaced article 13.11a in an overhaul of the Election Code in 1985. *See* Act of May 13, 1985, 69th Leg., R.S., ch. 211, § 1, 1985 Tex. Gen. Laws 802, 971-72. Article 13.11a, V.T.C.S., prohibited a primary voter from appearing on the ballot as a nominee "of any other party for any office to be voted on at the general or special election. Act of May 24, 1963, 58th Leg., R.S., ch. 424, § 86, 1963 Tex. Gen. Laws 1017, 1076-77 (emphasis added). The reference to special elections was deleted in the 1985 revision of the code.

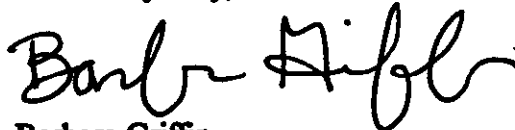
²The "voting year" is the twelve-month period beginning January 1 of each year. Elec. Code § 1.005(23).

Candidates for a vacant senate office are required to list on their ballot application the party with which they are "aligned," if any.³ Indicating party alignment on a special election ballot application is not one of the methods of affiliation set out in the code. Any constitutional or statutory provision that restricts rights to hold public office is to be strictly construed in favor of eligibility. *Wentworth v. Meyer*, 839 S.W.2d 766, 767 (Tex. 1992); *Brown v. Meyer*, 787 S.W.2d 42, 45 (Tex. 1990). We conclude that section 162.012 does not prohibit a person who became affiliated with a party by voting in a primary election from aligning with a different party as a candidate in a special election.

S U M M A R Y

A person who voted in a political party's primary election is eligible to file a ballot application stating that the person is aligned with a different party for the purpose of becoming a candidate in a special election to be held in the same voting year to fill a vacancy in the Texas Senate.

Yours very truly,

A handwritten signature in black ink, appearing to read "Barbara Griffin". The signature is fluid and cursive, with the first name "Barbara" and last name "Griffin" clearly distinguishable.

Barbara Griffin
Assistant Attorney General
Opinion Committee

³Prior to the 1985 Election Code revision, the statutory predecessor to section 203.005, article 4.10 of the Election Code, required a statement of party "affiliation." Act of Apr. 30, 1975, 64th Leg., R.S., ch. 151, § 1, 1975 Tex. Gen. Laws 356.